

ORDINANCE NO. 743

**AN URGENCY ORDINANCE OF THE CITY OF CARPINTERIA AMENDING
ORDINANCE NO. 741 ENACTING A TEMPORARY MORATORIUM ON EVICTIONS
DUE TO NONPAYMENT OF RENT FOR COMMERCIAL TENANTS WHERE THE
FAILURE TO PAY RENT RESULTS FROM INCOME LOSS RESULTING FROM THE
NOVEL CORONAVIRUS (COVID-19), AND SETTING FORTH THE FACTS
CONSTITUTING SUCH URGENCY**

WHEREAS, a novel coronavirus, named SARS-CoV-2 and the disease it causes has been named "coronavirus disease 2019" ("COVID-19"), causes infectious diseases and was first detected in China in December 2019 and has subsequently spread to the United States of America, including California; and

WHEREAS, as of May 20, 2020, COVID-19 is easily transmissible from person to person, including from asymptomatic persons, and has spread globally to over 216 countries, areas or territories, infected over 4,893,186 people, and killed more than 323,256 individuals, per the World Health Organization ("WHO"); and

WHEREAS, symptoms of COVID-19 include fever, cough, and shortness of breath; and outcomes have ranged from mild to severe sickness and in some cases death. The Centers for Disease Control and Prevention ("CDC") considers the virus to be a very serious public health threat; and

WHEREAS, on March 4, 2020, Governor Newsom declared a state of emergency to make additional resources available, to formalize emergency actions already underway, and to help the state prepare the effects of COVID-19; and

WHEREAS, on March 4, 2020, in response to the Governor's declaration, the County Emergency Operations Center ("EOC") initiated the COVID-19 incident response for the Operational Area that includes the City of Carpinteria, and the Operational Area EOC is currently activated at Level I ("Full Activation"); and

WHEREAS, on March 11, 2020, the WHO declared COVID-19 a global pandemic; and

WHEREAS, on March 11, 2020, Governor Newsom and California Department of Public Health officials recommended that non-essential gatherings should be postponed or cancelled across the state until the end of March, in order to implement social distancing guidelines intended to protect all individuals, particularly those who are at high risk of severe illness for COVID-19, and to slow further spread of COVID-19; and

WHEREAS, on March 12, 2020, California Governor Gavin Newsom issued Executive Order N-25-20 declaring, pursuant to the authority granted in the California Government Code, that the Employment Development Department shall waive the ordinary one-week waiting period for claims for disability insurance and unemployment insurance related to COVID-19; and

WHEREAS, on March 12, 2020, Governor Gavin Newsom also declared in Executive Order N-25-20 that the Department of Tax and Fee Administration shall grant up to 60 days relief to any persons unable to timely file their taxes as a result of hardship related to COVID-19; and

WHEREAS, on March 12, 2020, the County of Santa Barbara ("County") Local Health Officer declared a local health emergency exists in the County due to an imminent and proximate threat to public health, within the meaning of Section 101080 of the Health and Safety Code, by the introduction of COVID-19 in the County, and directed local agencies in the County to implement Governor Newsom's social distancing guidelines; and

WHEREAS, on March 13, 2020, the President of the United States declared a national emergency and that the Federal government would make \$50 billion in emergency funding available to assist state and local governments in preventing the spread of and addressing the effects of COVID-19; and

WHEREAS, on March 13, 2020, all 20 school districts in the County announced they would be closed indefinitely starting Monday, March 16, 2020 in response to COVID-19; and

WHEREAS, as of March 15, 2020, the CDC and Prevention issued new guidance encouraging people to avoid gatherings of more than 50 people; and

WHEREAS, on March 16, 2020, Governor Newsom declared in Executive Order N-28-20 that the economic impacts of COVID-19 have been significant and could threaten to undermine Californians' housing security and the stability of California businesses; and

WHEREAS, on March 16, 2020, Governor Newsom also declared in Executive Order N-28-20 that many Californians are experiencing substantial losses of income as a result of business closures, the loss of hours or wages, or layoffs related to COVID-19, hindering their ability to keep up with their rents, mortgages, and utility bills; and

WHEREAS, on March 16, 2020, Governor Newsom also declared in Executive Order N-28-20 that any preemption of local police powers related to California Civil Code § 1940 *et seq.* or § 1954.25 *et seq.* are hereby suspended as it relates to local jurisdictions enacting moratoria on residential and commercial evictions; and

WHEREAS, on March 17, 2020, the California Department of Public Health and County Public Health Department directed all bars, nightclubs, pubs, breweries and wineries to close immediately; and restaurants and other food facilities offering on-site dining should immediately transition to only offering delivery or take-out service as part of the public health effort to slow the spread of COVID-19; and

WHEREAS, on March 17, 2020, the City of Carpinteria ("City") Director of Emergency Services issued a Proclamation of Local Emergency by the Director of Emergency Services for the Novel Coronavirus (COVID-19) Pandemic ("Proclamation"); and

WHEREAS, on March 19, 2020, Governor Newsom issued Executive Order N-33-20 instructing all individuals living in the State of California to stay home or at their place of residence, except as needed to maintain continuity of operation of federal critical infrastructure sectors; and

WHEREAS, on March 22, 2020, the President of the United States approved California's request for a presidential Major Disaster Declaration to bolster the State's COVID-19 emergency response efforts; and

WHEREAS, the Carpinteria City Council ("Council") ratified the Director of Emergency Services' Proclamation and confirmed the existence of a local emergency relating to COVID-19 on March 23, 2020 (via adoption of Resolution No. 5954), and re-ratified said Proclamation on April 13, 2020 (via adoption of Resolution No. 5956) and on May 13, 2020 (via adoption of Resolution No. 5969); and

WHEREAS, on March 25, 2020, Governor Newsom announced support from Citigroup, JPMorgan Chase, U.S. Bank, and Wells Fargo and nearly 200 state-chartered banks, credit unions, and servicers for a 90-day grace period for mortgage payments, relief from fees and charges and a 60-day moratorium on foreclosure sales and evictions; and

WHEREAS, on March 27, 2020, Governor Newsom issued Executive Order N-37-20 banning the enforcement of eviction orders for tenants of a residence or dwelling unit affected by COVID-19 through May 31, 2020. Executive Order N-37-20 prohibits landlords from evicting tenants for nonpayment of rent and prohibits enforcement of evictions by law enforcement or the courts; and

WHEREAS, on March 27, 2020, the United States Congress passed and the President of the United States signed the Coronavirus Aid, Relief and Economic Security Act ("CARES Act"); and

WHEREAS, Section 4022 of the CARES Act authorize a borrower to obtain a forbearance for 180 days, plus a 180-day extension for federally-backed

mortgage loans without accruing interest or fees, and prohibits foreclosures on all federally-backed mortgage loans for 60-days beginning on March 18, 2020; and

WHEREAS, Section 4023 of the CARES Act authorizes a similar forbearance on federally-backed mortgage loans for multifamily properties, when the borrower agrees to not evict or charge late fees to tenants for the duration of the forbearance period; and

WHEREAS, Section 4024 of the CARES Act prohibits landlords with a mortgage guaranteed, supplemented, protected or assisted in any way by specific federal programs from initiating legal action to recover possession of a rental unit or charge late fees, penalties or other charges to the tenants related to the nonpayment of rent; and

WHEREAS, many events across the County are being canceled or postponed due to the orders and recommendations at all levels of government to stop large gatherings amid concerns over the spread of COVID-19, and these cancellations and postponements cause a loss in revenue for the associated vendors, organizations and businesses, loss of income for the people who would have staffed the events, as well as lost revenue for surrounding local businesses that rely on such events to bring patrons to their businesses; and

WHEREAS, many businesses in the City are either not permitted to remain open or must severely restrict activities, causing significant adverse financial impacts. Also, state and county orders and guidance calling on residents to stay at home is resulting in a severe decline in consumer spending and tourism, which has had significant negative impacts on revenue for most small businesses in Carpinteria; and

WHEREAS, the Council found these conditions warrant and necessitate a temporary moratorium on the eviction of commercial tenants suffering from economic hardship due to of a local emergency to address the COVID-19 pandemic, the state of emergency, or governmental response and enacted Ordinance No. 741 on April 13, 2020; and

WHEREAS, Ordinance No. 741 enacted a temporary moratorium intended to promote stability and fairness within the commercial rental market in the City during the COVID-19 pandemic outbreak, and to prevent avoidable hardship for local businesses thereby serving the public peace, health, safety, and public welfare and to enable commercial tenants in the city whose income and ability to work is affected due to COVID-19 to remain in their homes; and

WHEREAS, although the State and County have entered Stage 2 of the Governor' Resiliency Roadmap, which loosens some public health and safety restrictions and allows essential and lower-risk businesses to re-open with certain protections in place, these businesses are expected to still have severely restricted activities and corresponding significant adverse financial impacts; and

WHEREAS, Ordinance No. 743 would amend Ordinance No. 741 to extend its temporary commercial eviction protections until the expiration of Executive Order N-28-20 on May 31, 2020, unless the Governor of the State of California extends Executive Order N-28-20 or the effect of that order is extended by the Governor, or until the conclusion of the Repayment Period as defined in Section 4.B of Ordinance No. 741.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CARPINTERIA AMENDS ORDINANCE NO. 741 TO READ AS FOLLOWS:

SECTION 1. Incorporation of Recitals. The Council hereby finds that all of the foregoing recitals and the staff report presented herewith are true and correct and are hereby incorporated and adopted as findings of the Council as though fully set forth herein.

SECTION 2. Findings. The Council hereby finds, determines and declares that this urgency ordinance adoption pursuant to Government Code section 36937 is necessary because:

- A. Commercial activity and businesses are essential to a vibrant and healthy community, and this temporary moratorium promotes stability and fairness within the commercial rental market as businesses have been substantially impacted by orders to “stay-at-home” and limitations on operations and hours; and
- B. Without the imposition of this urgency ordinance, there is an increased risk of a substantial impact to our local businesses, causing further disruption by delaying local economic recovery, and imperiling the lives or property of inhabitants of the city; and
- C. For the immediate preservation of the public peace, health, and safety, the Council finds that it is necessary to adopt an ordinance regulating commercial evictions, for all of the reasons set forth in the recitals above, which are incorporated herein by reference.

SECTION 3. Urgency Need. Based on the foregoing recitals and findings, all of which are deemed true and correct, this ordinance is urgently needed for the immediate preservation of the public peace, health, and safety. This urgency ordinance shall take effect immediately upon adoption in accordance with the provisions set forth in Government Code section 36937.

SECTION 4. Temporary moratorium on commercial evictions. The Council does adopt the emergency regulations relating to commercial evictions where failure to pay rent results from impacts resulting from COVID-19 as more specifically set forth below:

- A. A temporary moratorium on eviction for nonpayment of rent by commercial tenants impacted by the COVID-19 crisis is imposed as follows:

1. During the period of local emergency declared in response to COVID-19, no landlord shall endeavor to evict a commercial tenant in the following situations:

- (a) For nonpayment of rent if the commercial tenant demonstrates that the commercial tenant is unable to pay rent due to financial impacts related to COVID-19, the state of emergency, or government response; or
- (b) For the commercial tenant's refusal to enter into or otherwise agree to a payment plan or agreement requiring the tenant to pay all or some of rent due during the period of local emergency declared in response to COVID-19; or
- (c) For a no-fault eviction unless necessary for the health and safety of tenants, neighbors, or the landlord.

2. A landlord who knows that a commercial tenant cannot pay some or all of the rent temporarily for the reasons set forth above shall not serve a notice or otherwise seek to evict for nonpayment of rent.

3. A landlord who knows of a commercial tenant's inability to pay rent in full within the meaning of this ordinance if the commercial tenant, within a reasonable amount of time, not to exceed seven (7) days after the date that rent is due, notifies the landlord in writing of lost income and inability to pay the full rent due to financial impacts related to COVID-19, the state of emergency or government response. For purposes of this ordinance, "in writing" includes email or text communications to a landlord or the landlord's representative with whom the commercial tenant has previously corresponded by email or text. Any medical or financial information provided to the landlord shall be held in confidence, and only used for evaluating the commercial tenant's claim.

B. Nothing in this ordinance shall relieve the commercial tenant of liability for the unpaid rent, which the landlord may seek after expiration of the local emergency and the commercial tenant must pay within one hundred and eighty (180) days of the expiration of the local emergency or termination of this urgency ordinance ("Repayment Period"). Nothing in this ordinance shall prohibit the landlord and the commercial tenant from negotiating for the partial payment of unpaid rent, in which case the commercial tenant must pay the balance of unpaid rent within the Repayment Period. A landlord may not charge or collect a late fee or interest for rent that is delayed for the reasons stated in this ordinance. A landlord may not seek to evict the tenant for non-payment of rent during the period of local emergency declared in response to COVID-19 nor seek rent that is delayed for the reasons stated in this ordinance through the eviction process until after the Repayment Period.

C. Enforceability

1. In the event of any violation of this Ordinance by a landlord, such a violation shall be enforceable by the individual tenant in a court of the appropriate jurisdiction in which injunctive relief may be granted, in addition to actual and exemplary

damages. In any such court proceeding, the prevailing party shall be awarded his reasonable attorneys' fees and the court, where applicable, shall be empowered to order treble damages.

2. Nothing herein shall be deemed to interfere with the right of a landlord to file an action against a tenant or non-tenant third party for the damage done to said landlord's property. Nothing herein is intended to limit the damages recoverable by any party through a private action.

SECTION 5. Violations. This Ordinance is an urgency ordinance adopted pursuant to a local, state and national state of emergency. This Ordinance grants a defense in the event that an unlawful detainer action is commenced in violation of this Ordinance. Violations of this Ordinance also shall be punishable as a misdemeanor as set forth in Chapter 1.08 of the Carpinteria Municipal Code.

SECTION 6. Uncodified. This Ordinance shall not be codified.

SECTION 7. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 8. Effective Date and Expiration Date. This ordinance shall take effect immediately upon its adoption and continue until the earlier of (1) the expiration of Executive Order N-28-20 on May 31, 2020, unless the Governor of the State of California extends Executive Order N-28-20 or the effect of that order is extended by the Governor, or (2) the conclusion of the Repayment Period as defined in Section 4.B.

SECTION 9. Environmental Determination. The Council finds that the adoption and implementation of this ordinance are exempt from the provisions of the California Environmental Quality Act under section 15061(b)(3) in that the Council finds there is no possibility that the implementation of this ordinance may have significant effects on the environment. The ordinance would apply commercial and residential tenant protection measures to existing units in the City, which is solely an administrative process resulting in no physical change to the environment.

SECTION 10. Publication. The City Clerk is directed to cause this ordinance to be published in the manner required by law.

PASSED, APPROVED AND ADOPTED on May 26, 2020, by the following vote:

AYES: COUNCILMEMBER(S): CARTY, LEE, SHAW, CLARK, NOMURA

NOES: COUNCILMEMBER(S): NONE

ABSENT: COUNCILMEMBER(S): NONE

ABSTAIN: COUNCILMEMBER(S): NONE



Mayor, City of Carpinteria

ATTEST:



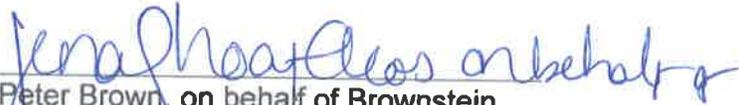
City Clerk, City of Carpinteria

I hereby certify that the foregoing resolution was adopted at a regular meeting of the City Council of the City of Carpinteria held on May 26, 2020.



City Clerk, City of Carpinteria

APPROVED AS TO FORM:



Peter Brown, on behalf of Brownstein
Hyatt Farber Schreck, LLP acting as
City Attorney of the City of Carpinteria